

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

PERFORMING ARTS COMMUNITY  
IMPROVEMENT DISTRICT,

Plaintiff,

vs.

ACE AMERICAN INSURANCE CO.,

Defendant.

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Case No. 13-0945-CV-W-ODS

ORDER AND OPINION DENYING PLAINTIFF'S MOTION TO STRIKE

Pending is Plaintiff's Motion to Strike, which asks the Court to strike Defendant's second, fourth, seventh and tenth affirmative defenses. Plaintiff reasons that its complaint only seeks declaratory relief and these defenses should be struck because they relate to damages. The Court rejects Plaintiff's premise and denies the motion (Doc. # 9).

The Complaint generally alleges Plaintiff is an additional insured on a builder's risk insurance policy. A claim was previously submitted on the policy by the builder, and Defendant denied the claim. Plaintiff has submitted the same claim, and to date Defendant has not changed its position with respect to its obligations. Plaintiff filed this suit seeking a declaration that Defendant is required to cover the loss and also requests the Court to "retain jurisdiction to determine [Plaintiff's] loss and damage and enter judgment accordingly."

A declaratory judgment is a form of relief; it is not a cause of action. The cause of action Plaintiff asserts is breach of contract. Plaintiff does not want just a declaration that the contract was breached: it also wants an appropriate award of damages for that breach. In fact, Plaintiff explicitly seeks (1) a declaration that the contract has been breached and, if and when it prevails, (2) an award of damages. It wants all of that relief in this lawsuit, in the form of a judgment from this Court. This is the essence of all breach of contract claims. Plaintiff's attempt to break the cause of action down into component parts does not alter the nature of the suit.

The Motion to Strike is denied.

IT IS SO ORDERED.

DATE: January 9, 2014

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, SENIOR JUDGE  
UNITED STATES DISTRICT COURT